IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

SALISA LUSTER HARRISON,

Plaintiff,

v.

RICK WOOLRIDGE, BRIAN TUCKER, ROBERT C. WHITE, MICHAEL SULLIVAN, STEVE CONRAD, DEE ALLEN, CAREY KLAIN, DAVID RAY, DAVID ALLEN, CAROLYN NUNN, and JOHN DOES 1–10, all individually,

Defendants.

Case No. 3:18-CV-388 GNS

Electronically Filed

PLAINTIFF'S OMNIBUS RESPONSE TO DEFENDANTS' MOTIONS TO DISMISS

NOW COMES, Plaintiff, SALISA LUSTER HARRISON (hereafter "Plaintiff"), by and through her attorneys, and for her response to the motion to dismiss filed by Defendants, BRIAN TUCKER, MICHAEL SULLIVAN, STEVE CONRAD, DEE ALLEN, CAREY KLAIN, DAVID RAY, DAVID ALLEN, CAROLYN NUNN and ROBERT C. WHITE (hereafter "Defendants")[1], and each of them, states as follows:

I. INTRODUCTION

The strategy underlying Defendants' motion to dismiss is clear: distort and redefine Plaintiff's plausible, carefully-pled complaint and then feverishly kick the stuffing out of the false "strawman" allegations they have created. The point of this cynical exercise is to unfairly convert Plaintiff's actionable, direct-liability intentional misconduct allegations into non-viable "failure-

[1] Defendants, Brian Tucker, Michael Sullivan, Steve Conrad, Dee Allen, Carey Klain, David Ray, David Allen and Carolyn Nunn, filed their motion to dismiss on September 20, 2018. See Doc. #14. On October 10, 2018, Defendant, Robert C. White, filed his motion to dismiss based upon identical grounds as his co-defendants. See Doc. #18. On October 17, 2018, the Court granted Plaintiff leave to respond to both motions to dismiss in a single omnibus brief. See Doc. #20.

to-investigate" derivative liability claims which fit the mold of their motion. Not only is this disingenuous of Defendants, but it actually reveals a *de facto* acknowledgment that Plaintiff's complaint is sufficiently pled and entirely in line with the pleading standards promulgated in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Defendants' motion is therefore wholly without merit and is rightfully denied.

II. LEGAL STANDARD AND LAW

To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a complaint "need not contain 'detailed factual allegations,' but it must contain more than 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action…" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007). A complaint is insufficient "if it tenders 'naked assertions' devoid of further factual enhancement.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937 (2009)(quoting *Twombly*, 550 U.S. at 557, 127 S.Ct. 1t 1966).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (citing *Twombly*, 550 U.S. at 556). The plausibility standard "does not impose a probability requirement at the pleading stage; it simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of illegal [conduct]." *Twombly*, 550 U.S. at 556. In deciding whether the plaintiff has set forth a plausible claim, the court must accept as true the factual allegations in the complaint. See *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S.Ct. 2197 (2007). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 668 (citing *Twombly*, 550 U.S. at 555).

III. ARGUMENT

A. DEFENDANTS' MOTION TO DISMISS LACKS MERIT AND SHOULD BE DENIED

As stated above, *Iqbal* is the controlling pleading standard, and it requires that a complaint contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" See *Iqbal*, at 678. In this lawsuit, one alleging fraudulent concealment, Plaintiff's complaint consists of three (3) counts: Count I, which alleges a denial of access to the courts in violation of the First Amendment; Count II, averring a violation of the Equal Protection Clause of the 14th Amendment; and Count III, which complains of a decade-long conspiracy between and among Defendants. See Doc. #1 at ¶¶ 80-104. The collective purpose of these unconstitutional acts and omissions was to deprive Plaintiff of her right to access the courts and to deny her equal protection of the laws. See Doc. #1 at ¶¶ 81-103.

It cannot be reasonably denied that these legal theories reflect actionable constitutional liability claims. See *Christopher v. Harbury*, 536 U.S. 403 (2002); see *Willowbrook v. Olech*, 528 U.S. 562, 120 S.Ct. 1073 (2000); see *Hooks v. Hooks*, 771 F.2d 935, 943-44 (6th Cir. 1985). Therefore, the question becomes: has Plaintiff sufficiently pled these viable causes of action? A review of Plaintiff's detailed complaint, along with simultaneous analysis of controlling case law, militates an affirmative finding because, again, Plaintiff's claims are colorable, viable and, moreover, sufficiently pled in full satisfaction of *Iqbal*.

1. Plaintiff's Denial to Access of Courts Claim Satisfies the *Iqbal* Standard

"The Supreme Court has recognized a constitutional right of access to the courts, whereby a plaintiff with a nonfrivolous legal claim has the right to bring that claim to a court of law." *Flagg v. City of Detroit*, 715 F.3d 165, 173 (6th Cir. 2013)(citing *Christopher*, 536 U.S. at 415n.12). The right of individuals to pursue legal redress for claims which have a reasonable basis in law and

fact is protected by the First and Fourteenth Amendments. See *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741 (1983). "A corollary of this right is that efforts by state actors to impede an individual's access to courts or administrative agencies may provide the basis for a constitutional claim under 42 U.S.C. § 1983. Judicial access must not merely exist but also must be 'adequate, effective and meaningful…and therefore, when police officers conceal or obscure important facts about a crime from its victims rendering hollow the right to seek redress, constitutional rights are undoubtedly abridged.'" *Vasquez v. Hernandez*, 60 F.3d 325, 328 (7th Cir. 1995)(quoting *Bounds v. Smith*, 430 U.S. 817, 822 (1977); (citing *Bell v. City of Milwaukee*, 746 F.2d 1205, 1261 (7th Cir. 1984)).

There are two types of "denial of right of access to court" claims: forward-looking; and backward-looking. *Flagg*, 715 F.3d at 173. In backward-looking claims, such as those alleged by Plaintiff, "the government is accused of barring the courthouse door by concealing or destroying evidence so that the plaintiff is unable to ever obtain an adequate remedy on the underlying claim." *Id.* (citing *Christopher*, 536 U.S. at 413). The elements of a backward-looking denial of access claim are: 1) a nonfrivolous underlying claim; 2) obstructive actions by state actors; 3) substantial prejudice to the underlying claim that cannot be remedied by the state court; and 4) a request for relief which the plaintiff would have sought on the underlying claim and is now unattainable. See *id.* (citations omitted). Where a plaintiff alleges that an applicable statute of limitations expired due to the actions of state actors, she has sufficiently pled substantial prejudice that cannot be remedied by a state court. See *Flagg*, 715 F.3d at 173; see also *Joyce v. Mavromatis*, 783 F.2d 56, (6th Cir. 1986).

Here, Plaintiff has sufficiently pled each of the backward-looking denial of access claim elements. See Doc. #1 at ¶¶ 81-89. Clearly, she has asserted the existence of a nonfrivolous

underlying claim–indeed, Plaintiff unfortunately alleges a deeply troubling, violent criminal attack on her person which, by any definition, constitutes an aggravated sexual assault and battery. See Doc. #1 at ¶¶ 2 and 45-49. She has alleged multiple obstructive actions by several state actors, which include concealing material information, willful misrepresentation and withholding evidence. See Doc. #1 at ¶¶ 49, 52-55, 57, 63-65 and 76-77.

Plaintiff has further pled substantial prejudice to her underlying claim which cannot be remedied by the state court, specifically, the expiration of the statute of limitations for a civil action alleging the intentional torts of assault and battery. See Doc. #1 at ¶¶ 84-85. As pled, Plaintiff's opportunity for redress through the state courts ended on or about April 29, 2011, when the Commonwealth's three-year limitations period for torts expired. See Doc. #1 at ¶¶ 84-85. Defendants' unlawful acts concealed the identity of Plaintiff's attacker(s), making redress against the attacker(s) impossible and no one against whom to bring suit.

So this is decidedly unlike the plaintiff in *Joyce v. Mavromatis*, 783 F.2d 56 (6th Cir. 1986), and distinct from the plaintiff in *Swekel v. City of Rouge*, 119 F.3d 1259 (6th Cir. 1997). Obviously, unlike *Joyce*, Plaintiff does not know the identity of the tortfeasor. See *id.* at 1263. Nor is Plaintiff's situation akin to that described in *Swekel*. In that case, the alleged victim had a suspicion regarding a specific individual and even conveyed that to investigating officers. See *id.* at 1261 ("…despite the fact that Plaintiff told the police that she suspected Todd Kulinski."). Moreover, in *Swekel*, the alleged victim had the ability to file suit against another tortfeasor in the underlying claim, which she did, apparently cultivating important discovery prior to the expiration of the limitations period. See *id.* Plaintiff was not afforded these possibilities.

Furthermore, regarding "unattainable relief" suffered by Plaintiff, she has even alleged that Defendants' misconduct "resulted in loss of crucial evidence that can never be recovered." See

Doc. #1 at ¶ 43. Defendants knowingly refused to collect and test physical evidence vital to Plaintiff obtaining relief. See Doc. #1 at ¶ 49. Clearly, Plaintiff has sufficiently pled her denial of access to court claim and, at the very least, she should be allowed nothing less than the plaintiff in *Swekel*, that is to say, an opportunity to engage in discovery and further develop the allegations of her well-pled complaint.

2. Plaintiff's Equal Protection Clause Allegations are Viable as Pled

An equal protection claims exists where police officers allegedly act with discriminatory intent in refusing to investigate alleged criminal acts against a victim. See *Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). Thus, a litigant who alleges that a police officer intentionally treated him or her differently than other similarly-situated individuals and alleges that there was no rational basis for the difference in treatment states a colorable Fourteenth Amendment equal protection claim. Id. Plaintiff has done this and much more.

In her complaint, Plaintiff alleges that Defendants "took affirmative steps" to conceal material facts and their own willful misconduct from Plaintiff in order to deprive her of "equal protection of the laws," *inter alia*. See Doc. #1 at ¶ 3. She asserts that Defendants "lied, concealed and misrepresented facts" to Plaintiff to keep hidden the discriminatory actions of their co-defendants "and, ultimately, to…deprive her of equal protection under the law." See Doc. #1 at ¶ 6. She then articulates the various ways this was accomplished–among them the removal of Plaintiff's rape kit from the KSP lab and relegation of said kit to a dusty backlog–dutifully satisfying the rigors of *Iqbal*. See Doc. #1 at ¶ 55.

As pled, these defendants went so far as to conspire "together to prevent the successful DNA testing of SALISA's rape kit…depriving her of equal protection of the laws." See Doc. #1 at ¶ 55. Plaintiff even cited the Louisville Metro Police Department's very own policies regarding

DNA evidence (SOP 11.2.4) and sexual assault investigations (SOP 8.50.2). See Doc. #1 at ¶ 56. Obviously, these policies do not permit officers to racially discriminate among the victims seeking state help. Perfecting her equal protection claims, Plaintiff alleges in Count II that she is a member of a protected group who has been treated differently than those similarly situated on account of her race. See Doc. #1 at ¶¶ 91-92. She then charges that because "there was no rational basis for the difference in treatment" her allegations state a viable Fourteenth Amendment Equal Protection Claim." See Doc. #1 at ¶ 93. Plaintiff reasserts this position in this response.

3. Plaintiff Has Pled Her Civil Conspiracy Claims in Accordance with *Iqbal* and, Based on the Supported Facts She Has Pled, the Case is Well Within the Statute of Limitations

The required elements for civil conspiracy under 42 U.S.C. § 1985 are well-known and beyond dispute. To prove a Section 1985 conspiracy claim: a complaint must allege that the defendants did (1) "conspire" (2) "for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." It must then assert that one or more of the conspirators (3) did, or caused to be done, "any act in furtherance of the object of [the] conspiracy," whereby another was (4) "injured in his person or property deprived of having and exercising any right or privilege of a citizen of the United States." *Griffin v. Breckenridge*, 403 U.S. 88, 102-3 (1971). A civil rights case alleging conspiracy should not be dismissed at the pleadings stage "unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim." See *Azar v. Conley*, 456 F.2d 1382, 1391 (6th Cir. 1972).

Regarding the accrual of such an action, a civil conspiracy continues until the completion of the last overt act in furtherance of the conspiracy. *Buford v. Tremayne*, 747 F.2d 445, 448 (8th Cir. 1984). Thus, the statute begins to run only upon completion of that last act, which need not be an illegal act. See *id.* Moreover, and distinct from the "last overt act" doctrine, fraudulent

concealment committed by the tortfeasor serves to toll the statute of limitations until the time Plaintiff "discovers or should have discovered the fraudulent concealment or facts to put the plaintiff on actual or inquiry notice of the claim through reasonable diligence…" See *Carrier Corp. v. Outokumpu Oyi*, 673 F.3d 430, 446-7 (6th Cir. 2012).

a. Plaintiff Alleges Fraudulent Concealment Has Tolled the Limitations Period Commencement Date to December 8, 2017

"Three elements must be pleaded in order to establish fraudulent concealment: (1) wrongful concealment of their actions by the defendants; (2) failure of the plaintiff to discovery the operative facts that are the basis of his cause of action within the limitations period; and (3) plaintiff's due diligence until discovery of the facts." *Id.* (quoting *Dayco Corp. v. Goodyear Tire & Rubber Co.*, 523 F.2d 389, 394 (6th Cir. 1975). The factual allegations underlying a plaintiff's charge of fraudulent concealment must be pled with particularity and, with regard to the "wrongful concealment" element, she must point to "affirmative acts of concealment." See *id.* Essentially, there must be some "trick or contrivance" intended to exclude suspicion and mislead the plaintiff. See *id.* (citing *Pinney Dock & Transp. Co. v. Penn Cent. Corp.*, 8383 F.2d 1445, 1467 (6th Cir. 1988)). Actions which serve to deceive a reasonably diligent plaintiff will toll the statute. *Id.*

In the instant case, Plaintiff alleges multiple instances of acts accurately characterized as fraudulent concealment which served to hide affirmative acts of misconduct to her detriment. See Doc. #1 at ¶¶ 7, 20, 54, 57-58, 64, 67-69 and 77-79. As pled, the effect of these fraudulent acts began in April 2008 and continued up to, and including, December 8, 2017, when, for the very first time, Plaintiff obtained from an investigative reporter the materials hidden from her for nearly ten years. See Doc. #1 at ¶¶ 7, 10, 57, 67-69 and 76-77. Plaintiff's claim here is proven by email she received from the reporter, a fact referenced in Plaintiff's complaint. See Doc. #1 at ¶ 102. This email was not attached to Plaintiff's complaint, but the Court should consider it nonetheless

because it was "referred to in the complaint [in Paragraph No. 102] and central to [her] claim." See *Greenberg v. Life Ins. Co. of Virginia*, 177 F.3d 507, 514 (6th Cir. 1999). This December 8, 2017 email, received within a year of Plaintiff's complaint, is attached hereto as Exhibit A.

Plaintiff has pled that Defendants' "intentional acts and omissions constituted positive acts of fraud" intended to keep the misconduct concealed. See Doc. #1 at ¶ 79. She alleged that these facts were not discoverable despite the reasonable–indeed dogged–diligence she exhibited for over ten years. See Doc. #1 at ¶¶ 4, 60-65 and 79. To this end, Plaintiff specifically pled the applicable limitations period commencement–December 8, 2017–based on the facts presented:

> 79. That, to the extent that there exists an ostensible affirmative defense regarding the statute of limitations, said defense fails because, [] as pled above, this fraudulent concealment served to toll the initiation of the statute of limitations prior for causes of action pertaining to the investigation of SALISA's April 2008 attack is tolled to December 8, 2017. See Doc. #1 at ¶ 79.

Defendants essentially concede existence of these allegations in their argument. See Doc. #14-1 at p. 10. They state "[i]t is anticipated that Plaintiff will argue that she only became aware of the alleged conspiracy in 2017…" See Doc. #14-1 at p. 10. This is not prescient in the least; it is spelled out in Plaintiff's complaint. See Doc. #1 at ¶ 79. at It is therefore perhaps more accurate to state that Plaintiff anticipated Defendants' defense, and the facts, as articulated in her pleading, defeat that defense.

b. Moreover, Plaintiff Alleges a Last Overt Act in Furtherance of the Conspiracy Occurring on January 7, 2017

Again, in a conspiracy, the limitations period runs "from the occurrence of the last overt act resulting in damage to plaintiff." *Buford*, 747 F.2d at 448. Here, based on official documents, ones referenced in Plaintiff's complaint, the arguable last overt act in furtherance of the conspiracy was January 7, 2018, the day before Defendant David Allen was all but forced to authorize with

the DNA analysis of Plaintiff's rape kit. See Plaintiff's Exhibit B. This is the same rape kit that he told Plaintiff was inconclusive in December 2016, a willful misrepresentation. See Ex. B. A review of the documents comprising Exhibit B reveals a state actor's final attempts at preventing Plaintiff's rape kit from being tested after he already informed the victim it had been tested. See Ex. B. It reveals just one of many lies told to Plaintiff. The conspiracy occurred as recently as January 2018, within a year of Plaintiff's filing.

4. It Was Clearly Established At all Relevant Times that State Actors May Not Violate a Citizen's Right to Access the Courts or Their Right to Equal Protection Under the Law

Federal courts use a two-step analysis to assess the applicability of the qualified immunity affirmative defense. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). The first inquiry is whether the state actor's alleged conduct violated constitutional right. See *id.* If the plaintiff shows that the actor violated a constitutional right, she must then demonstrate that this right was clearly established at the time of the infringement. See *id.* A right is clearly established if:

> The contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right. This not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful; but it is to say that in the light of pre-existing law the unlawfulness must be apparent. *Gragg v. Ky. Cabinet for Workforce Dev.*, 289 F.3d 958, 964 (6th Cir. 2002)(citing *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034 (1987).

Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341, 106 S.Ct. 1092 (1986); see also *Ashcroft v. al-Kidd*, 563 U.S. 731, 743, 131 S.Ct. 2074 (2011). As stated above, throughout her complaint, Plaintiff alleges that Defendants knowingly and willfully violated her constitutional rights. See generally Doc. #1.

That denial of access to the courts can serve as a basis for a constitutional claim was clearly established as early as 1977. See *Bounds v. Smith*, 430 U.S. 817, 821-822, 97 S.Ct. 1491 (1977); see also *Lewis v. Casey*, 518 U.S. 343, 354-5, 116 S.Ct. 2174 (1996). The denial of equal protection of the laws based on one's race has been clearly established in the United States for well over a hundred years. See *Yick Wo v. Hopkins*, 118 U.S. 356, 373-74, 6 S.Ct. 1064 (1886). It is hardly an overstatement to say this protection is a bedrock concept of our constitutional democracy. More specifically, in 1996, the Sixth Circuit held that it had long been "clearly established that police officers could not selectively enforce…[the] laws based on racial distinctions." *Gerdenhire v. Schubert*, 205 F.3d 303, 320 (6th Cir. 2000). Taking Plaintiff's allegations of willful misconduct as true, Defendants are not entitled to qualified immunity.

5. To Extent That the Court Determines that Plaintiff's Complaint Contains Pleading Deficiencies, the Prudent Course is to Allow Amendment and Plaintiff Prays for Same

Unequivocally, Plaintiff asserts that her complaint is pled sufficiently and in total accord with the dictates of *Iqbal*. However, should the Court disagree, finding any merit whatsoever in Defendants' arguments, Plaintiff would respectfully request leave to file an amended complaint which cures any actual or potential pleading deficiencies.

IV. CONCLUSION

As amply stated and shown above, Defendants' motion is without merit. Instead of challenging Plaintiff's well-pled, detailed allegations head-on, Defendants have distorted them to make their inapposite case law citations more applicable. Plaintiff's complaint allegations are not only plausible, per *Iqbal*, but they moreover paint a likely and compelling picture of deliberate institutional malfeasance designed to prevent the victim of a brutal attack from her rightful day in civil court. Plaintiff has sufficiently made the necessary threshold showing. At minimum, she is

entitled to engage in meaningful discovery like prior Sixth Circuit litigants, and she respectfully prays the Court deny Defendants' motion.

WHEREFORE, Plaintiff, SALISA LUSTER HARRISON, prays this Honorable Court deny the motion to dismiss filed by BRIAN TUCKER, MICHAEL SULLIVAN, STEVE CONRAD, DEE ALLEN, CAREY KLAIN, DAVID RAY, DAVID ALLEN, CAROLYN NUNN and ROBERT C. WHITE, and each of them, and that the Court provide any and all relief it deems equitable and just, including, but not limited to, leave for Plaintiff to file an amended complaint should the Court determine any pleading deficiencies exist, and also an in-court hearing to elaborate on points raised per LR 7.1(f), if necessary.

Respectfully submitted,

/s/ Michael J. Laux
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Telephone: (502) 785-3822
E-mail: lonita.baker@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been filed using CM/ECF Electronic Filing System, on November 2, 2018, which will provide electronic notification to the following counsel of record:

Ms. Kristie B. Walker
Assistant Jefferson County Attorney
531 Court Place, Suite 900
Louisville, KY 40202
(502) 574-3225

From: "Rose, Derrick" <dnrose@whas11.com>
Date: December 8, 2017 at 5:21:24 PM CST
To: Cheryl Ellis <justiceforsal@gmail.com>
Subject: Update

Hi Ms. Ellis,

Before I head out of the office for the weekend, I wanted to give you an update and make a request. We did some more digging and we can now prove the testing as a result of the November 11, 2016 letter (from KSP to Lt. Allen asking for authorization) was never done.

Based on his letter on December 28, to Salisa, he implies the testing was done and it yielded nothing new and as a result he had to close to case.

We know not that was not the case.

So this yields new questions for us…why was the testing not authorized? Why did he say it was when it wasn't? More importantly what is your and Salisa's reaction to knowing that testing was not done and still has not been done?

At some point as we continue to ask questions of Chief Conrad and LMPD, we will want to sit down with you for an interview and do a phone or Skype interview with Salisa. What's also great is we have a sister station channel 11 in Little Rock.

I wanted to leave you with that update this weekend and let you know we still have a lot left to do, but we are on the trail and it is heating up.

DERRICK ROSE

i-Team Investigator | Storyteller
P.502.582.7232 | **C**.502.536.7711 | **F**. 502.585.5992 | dnrose@whas11.com

EXHIBIT A

KENTUCKY STATE POLICE

Matt Bevin
Governor

919 Versailles Road
Frankfort, Kentucky 40601
www.kentuckystatepolice.org

John C. Tilley
Secretary

Richard W. Sanders
Commissioner

November 11, 2016

Whitney Collins
Kentucky State Police
Central Forensic Laboratory
100 Sower Blvd., Ste. 102
Frankfort, KY 40601

Lt. David Allen
Louisville Metro Police Department
Special Victims Unit
633 West Jefferson Street
Louisville, KY 40202

Lt. Allen:

The Kentucky State Police Central Forensic Laboratory was advised that no suspect has been listed in Louisville Metro Police Department Crime Scene Unit Case Number 0416208, Laboratory Number 08-J-02214. The laboratory was requested to perform analysis on Items 1.10(2 hairs from pubic hair combings from Salisa Luster), 1.11(1 hair from underwear from Salisa Luster), 5(7 hairs from T-shirt from Salisa Luster), 6(1 hair from bra from Salisa Luster), and 7(6 hairs from pajama pants from Salisa Luster).

The laboratory would like to advise the prosecuting attorney or investigating officer in this case that the DNA analysis requested would most likely result in the consumption of sample from the particular item. Pursuant to KRS 524 140 (5), this letter is to serve as notification that the entire sample may be consumed if the requested analysis is performed. We request that written authorization for testing be provided by the prosecuting attorney or investigating officer to the laboratory including acknowledgment that the entire sample may be consumed and that there is no suspect in this case. Please send correspondence to the attention of Lara Mosenthin, KSP Central Laboratory. Analysis will not proceed until the requested information is provided.

Sincerely,

Whitney Collins

Whitney Collins
Laboratory Supervisor,
Forensic Biology Casework

cc: KSP legal

LOUISVILLE METRO POLICE DEPARTMENT

GREG FISCHER
MAYOR

STEVE CONRAD
CHIEF OF POLICE

December 28, 2016

Salisa Harrison
57 Woodridge Dr.
Little Rock, AR 72204

Dear Ms. Harrison:

I have reviewed the entire file pertaining to the incident that occurred on April 27, 2008, at 1623 Huntington Place, #3. In my review, I noted all of the evidence that had been developed was previously submitted to both the Commonwealth Attorney and County Attorney prosecutors. Both prosecutors concluded there was not sufficient evidence for a criminal prosecution.

In 2015, the Kentucky State Police Central Forensic Laboratory was requested to perform analysis on items that had been recovered during the investigation. This was done in an attempt to use more advanced technology than was previously available in order to develop a suspect. Unfortunately, that evidence testing has not provided us with any further information.

With that information, combined with the insufficient evidence for a criminal prosecution, we are closing this case again. We will maintain the DNA evidence in accordance with KRS 524.140 in hopes that future advancements in the analysis of DNA may yield additional results. Thank you for being patient this last year as we revisited the case.

Sincerely,

Lt. David Allen
Special Victims Unit

cc: MAJ Lavita Chavous
LTC Gregory Burns
COL Michael Sullivan
Chief Steve Conrad
Legal Advisor Dennis Sims

3600 Chamberlain Lane, Suite 410
Louisville, KY 40241
Telephone #: (502) 426-8240
Fax #: (502) 426-4531

Jefferson Laboratory Branch
3600 Chamberlain Lane, Suite 410
Louisville, KY 40241
Telephone #: (502) 426-8240

Case 08-J-02214 Correspondence

Louisville Metro PD CSU Case #0416208

From: Mosenthin, Lara R (KSP)
Sent: Monday, January 08, 2018 2:54 PM
To: 'David.Allen2@louisvilleky.gov' <David.Allen2@louisvilleky.gov>
Subject: LMPD Case #80-08-030534

Det. Allen,

Please sign the consumption letter you forwarded to us, and email it back to me. The letter must have a signature before we can proceed.

Also, I will need to have the following items resubmitted: LMPD Items 1, 2, 3, and 4 (KSP Lab #08-J-02214 Items 1, 5, 6, and 7.) Please mark the KSP26 to my attention.

Thank you. Should you have any questions, please contact me.

Lara R. Mosenthin
Forensic Scientist Specialist II
Trace Analysis Section
Kentucky State Police Central Forensic Laboratory
100 Sower Blvd, Suite 102
Frankfort, KY 40601
(502) 564-5230

Confidentiality Statement

This communication contains information which is confidential. It is for the exclusive use of the intended recipient(s). If you are not the intended recipient(s) please note that any form of distribution, copying, forwarding or use of this communication, or the information therein, is strictly prohibited and may be unlawful. If you have received this communication in error, please, return it to the sender and then delete the communication and destroy any copies.

Date : 1/8/18 2:57 pm Analyst : Lara R. Mosenthin Type :Email

Attached letter was unsigned.

From: Sudkamp, Laura B (KSP)
Sent: Friday, December 22, 2017 1:47 PM
To: Collins-Fouts, Whitney L (KSP) <Whitney.Collins@ky.gov>; Mosenthin, Lara R (KSP) <Lara.Mosenthin@ky.gov>
Subject: FW: Salisa Luster case consumption letter

From: Allen, David M [mailto:David.Allen2@louisvilleky.gov]
Sent: Friday, December 22, 2017 1:22 PM
To: Collins-Fouts, Whitney L (KSP) <Whitney.Collins@ky.gov>; Sudkamp, Laura B (KSP) <Laura.Sudkamp@ky.gov>
Subject: Salisa Luster case consumption letter

Attached is a letter requesting analysis on the final piece of evidence in the Salisa Luster case.

Hope you all have a Merry Christmas,

Lt. David Allen

Date : 1/8/18 3:03 pm Analyst : Lara R. Mosenthin Type :Email

3600 Chamberlain Lane, Suite 410
Louisville, KY 40241
Telephone #: (502) 426-8240
Fax #: (502) 426-4531

Jefferson Laboratory Branch
3600 Chamberlain Lane, Suite 410
Louisville, KY 40241
Telephone #: (502) 426-8240

Case 08-J-02214 Correspondence

Louisville Metro PD CSU Case #0416208

From: Allen, David M [mailto:David.Allen2@louisvilleky.gov]
Sent: Monday, January 08, 2018 2:59 PM
To: Mosenthin, Lara R (KSP) <Lara.Mosenthin@ky.gov>
Subject: RE: LMPD Case #80-08-030534

Here you go. I will have CSU submit the evidence.

Regards,
Dave
502-551-0885

From: Mosenthin, Lara R (KSP) [mailto:Lara.Mosenthin@ky.gov]
Sent: Monday, January 8, 2018 2:54 PM
To: Allen, David M
Subject: LMPD Case #80-08-030534

Det. Allen,

Please sign the consumption letter you forwarded to us, and email it back to me. The letter must have a signature before we can proceed.

Also, I will need to have the following items resubmitted: LMPD Items 1, 2, 3, and 4 (KSP Lab #08-J-02214 Items 1, 5, 6, and 7.) Please mark the KSP26 to my attention.

Thank you. Should you have any questions, please contact me.

Lara R. Mosenthin
Forensic Scientist Specialist II
Trace Analysis Section
Kentucky State Police Central Forensic Laboratory
100 Sower Blvd, Suite 102
Frankfort, KY 40601
(502) 564-5230

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Date : 1/17/18 1:08 pm Analyst : Libby R. Wilson Type :Email

From: Wilson, Libby R (KSP)
Sent: Monday, December 04, 2017 3:43 PM
To: Dawson, Stephanie A (KSP) <Stephanie.Dawson@ky.gov>
Subject: 08-J-02214 ORR #17-2370 Luster